

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**VS.**

**CARDELL DEWAYNE JOHNSON,**

**Defendant.**

**CASE NO. 8:08CR234**

# MEMORANDUM AND ORDER

This matter is before the Court on the Amended Report and Recommendation (Filing No. 46) and the Report and Recommendation (Filing No. 50)<sup>1</sup> issued by Magistrate Judge F.A. Gossett regarding the Defendant's motions to suppress (Filing Nos. 27, 28). No objections have been filed to the Report and Recommendation as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).

The Defendant seeks an order suppressing evidence obtained and statements made as a result of the April 22, 2008, search of the Defendant's residence. Judge Gossett issued oral findings of fact and conclusions of law, reserving the issue relating to the absence of the affiant's signature on the application and affidavit for a search warrant (Ex. 1). (Filing No. 47, at 40-47.) Judge Gossett concluded: a *Franks* issue does not exist; probable cause supported the issuance of the search warrant; the *Leon* good faith exception applies; the Defendant knowingly and voluntarily waived his *Miranda* rights. (*Id.*, at 41-46.) Judge Gossett noted that, in conjunction with his later ruling regarding the lack of the affiant's signature, the issue of the statements being fruits of an illegal search warrant will be addressed. (*Id.*, at 46.)

<sup>1</sup>The Amended Report and Recommendation (Filing No. 46) was issued earlier than the Report and Recommendation (Filing No. 50).

In his Amended Report and Recommendation, Judge Gossett memorialized his oral conclusions of law. (Filing No. 46.) In his subsequent Report and Recommendation, Judge Gossett addressed the issue regarding the lack of the affiant's signature and concluded: the error was clerical; probable cause supported the issuance of the search warrant; and there are no fruits of an illegally issued search warrant. (Filing No. 50.) Therefore, Judge Gossett recommends that the Defendant's motions to suppress be denied.

Notwithstanding the absence of objections, pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3, the Court has conducted a de novo review of the record. The Court has read the parties' briefs and the transcript of the evidentiary hearing. The Court has also viewed the evidence. Because Judge fully, carefully, and correctly applied the law to the facts, the Court adopts the Report and Recommendation in its entirety.

IT IS ORDERED:

1. The Magistrate Judge's Amended Report and Recommendation (Filing No. 46) is adopted in its entirety;
2. The Magistrate Judge's Report and Recommendation (Filing No. 50) is adopted in its entirety; and
3. The Defendant's motions to suppress (Filing Nos. 27 and 28) are denied.

DATED this 23<sup>rd</sup> day of February, 2009.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge